

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case No.: 09-C-11578-LMA
)	
DEAN ALAN LINK,)	
)	DECISION
Member No. 66602,)	
)	
<u>A Member of the State Bar.</u>)	

I. Introduction

This matter is before the court on order of reference filed by the Review Department of the State Bar Court on November 23, 2009, for a hearing and decision as to whether the facts and circumstances surrounding a misdemeanor violation of California Vehicle Code section 23152, subdivision (a)—of which respondent Dean Alan Link was convicted—involved moral turpitude or other misconduct warranting discipline and, if so found, a recommendation as to the discipline to be imposed.

The Office of the Chief Trial Counsel of the State Bar of California (“State Bar”) was represented by Deputy Trial Counsel Maria Oropeza. Respondent represented himself.

In view of respondent’s misconduct and the facts and circumstances surrounding his conviction, the court orders, among other things, that respondent receive a public reproof.

II. Pertinent Procedural History

On March 19, 2009, respondent pled guilty to a misdemeanor violation of California Vehicle Code section 23152, subdivision (a) [driving under the influence of alcohol].

The State Bar reported the plea to the Review Department on October 22, 2009. The Review Department subsequently referred this matter to the Hearing Department for a hearing and decision recommending the discipline to be imposed in the event that the Hearing Department finds that the facts and circumstances surrounding respondent's conviction involved moral turpitude or other misconduct warranting discipline.

In accordance with the Review Department's order, this case proceeded to trial in the Hearing Department on June 2, 2010. The parties filed a Stipulation as to Facts and Admission of Documents on June 2, 2010. The court took this matter under submission for decision that same day.

III. Findings of Fact and Conclusions of Law

A. Jurisdiction

Respondent was admitted to the practice of law in the State of California on December 30, 1975, and has since been a member of the State Bar of California.

B. Findings of Fact

On February 12, 2009, respondent was found in his overturned vehicle by a California Highway Patrol Officer. Respondent had been involved in a single-car collision.

Respondent submitted to two breath tests. The results of the two breath tests placed respondent's blood alcohol concentration ("BAC") at .19% and .179%. Respondent also submitted to a blood draw. The results of the blood draw placed respondent's BAC at .19%.

On March 6, 2009, respondent was charged with a two-count criminal misdemeanor complaint for violations of Vehicle Code sections 23152, subdivision (a) [driving under the influence of alcohol] and 23152, subdivision (b) [driving with a BAC of .08% or higher].

On March 19, 2009, respondent appeared in the Calaveras County Superior Court and entered a guilty plea to Vehicle Code section 23152, subdivision (a). Respondent admitted to the high BAC as part of his plea agreement. That same day respondent was sentenced to, among other things, a six-month suspended sentence; a \$1,953 fine; 48 hours of jail time; the DUI first offenders program, and a requirement that he not drive with any amount of alcohol in his system, or otherwise consume or possess alcohol.

Four days after his sentencing, however, respondent was involved in a roll-over traffic collision after his vehicle struck several objects including a large tree. The responding officer observed several bottles of alcohol in respondent's vehicle at the crash site. Two blood draws were obtained from respondent; one registered a .17% BAC and the second registered a .12% BAC.

On April 20, 2009, respondent was charged in a three-count criminal misdemeanor complaint with violations of Vehicle Code sections 23152, subdivision (a); 23152, subdivision (b); and 14601.5, subdivision (a).

On August 26, 2009, these three charges were dismissed, and a fourth charge of violating Vehicle Code section 23154(a) [driving with a BAC of .01 percent or greater while on probation for driving under the influence] was added. Respondent entered a guilty plea to this charge and was ordered to pay a fine.

C. Conclusions of Law

An attorney's conviction of drunk driving, even with prior convictions of that offense, does not per se establish moral turpitude. (*In re Kelley* (1990) 52 Cal.3d 487, 494.) Here, the

court finds that the facts and circumstances surrounding respondent's conviction for driving under the influence of alcohol do not involve moral turpitude, but do involve other misconduct warranting discipline. (See *In re Carr* (1988) 46 Cal.3d 1089, and *In the Matter of Anderson* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 208.)

IV. Mitigating and Aggravating Circumstances

A. Mitigation

Respondent bears the burden of proving mitigating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, standard 1.2(e).)¹ Here, respondent has proven one mitigating circumstance.

1. No Prior Record of Discipline

Respondent has no prior record of discipline in over 33 years of practice prior to the present misconduct. (Std. 1.2(e)(i).) Respondent's 33 years of discipline-free practice prior to the present misconduct is entitled to considerable weight in mitigation. (See *In the Matter of Lane* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 735, 749.)

2. Huntington's Disease

Respondent testified that he has been diagnosed with Huntington's disease, and was therefore unable to control his compulsion to drink alcohol. Respondent, however, did not present any expert testimony on this subject. (See Std. 1.2(e)(iv).). The court finds that respondent's testimony does not establish, by clear and convincing evidence, a sufficient basis to warrant mitigation on this issue. (See *In the Matter of Gadda* (Review Dept. 2002) 4 Cal. State Bar Ct. Rptr. 416, 443.)

B. Aggravation

The court finds no factors in aggravation. (Std. 1.2(b).)

¹ All further references to standards are to this source.

V. Discussion

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession, and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; standard 1.3.)

Standard 1.6 provides that the appropriate sanction for the misconduct found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing discipline.

Standard 3.4 provides that the final conviction of a member of a crime which does not involve moral turpitude but which does involve other misconduct warranting discipline shall result in a sanction that is appropriate to the nature and extent of the misconduct found to have been committed by the member. (See also *In the Matter of Carr* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 108, 118; *In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 510.)

The standards, however, “do not mandate a specific discipline.” (*In the Matter of Van Sickle* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 980, 994.) It has long been held that the court is “not bound to follow the standards in talismanic fashion. As the final and independent arbiter of attorney discipline, [the Supreme Court is] permitted to temper the letter of the law with considerations peculiar to the offense and the offender.” (*Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.) Yet, while the standards are not binding, they are entitled to great weight. (*In re Silverton* (2005) 36 Cal.4th 81, 92.)

In a conviction referral proceeding, “discipline is imposed according to the gravity of the crime and the circumstances of the case.” (*In the Matter of Katz, supra*, 1 Cal. State Bar Ct. Rptr. 502, 510.)

The State Bar recommended that respondent be actually suspended for 60 days. The case law relied upon by the State Bar, however, involved facts and circumstances that were considerably more egregious than the present matter. (See *In re Carr, supra*, 46 Cal.3d 1089; *In the Matter of Carr, supra*, 2 Cal. State Bar Ct. Rptr. 108; *In the Matter of Anderson, supra*, 2 Cal. State Bar Ct. Rptr. 208; and *Alkow v. State Bar* (1966) 64 Cal.2d 838.)

Instead, the court found *In re Kelley, supra*, 52 Cal.3d 487, to be instructive. In *Kelley*, the Supreme Court ordered that an attorney with two convictions for driving under the influence of alcohol be publicly reprovved and placed on probation for three years. In mitigation, the attorney had no prior record of discipline, was extensively involved in community service, and cooperated during the disciplinary proceedings. No aggravating circumstances were found.

The court finds the facts and circumstances involved in the present matter to be roughly similar to those found in *Kelley*. Although the misconduct in *Kelley* involved two convictions for driving under the influence of alcohol, respondent, in the present matter, blatantly violated the terms of his criminal probation by driving with alcohol in his system just four days after his sentencing. Therefore, the court finds a level of discipline comparable to *Kelley* to be appropriate.

Accordingly, the court orders, as outlined below, that respondent receive a public reprovval.

VI. Recommended Discipline

It is ordered that respondent Dean Alan Link is hereby publicly reprovved. Pursuant to the provisions of rule 270(a) of the Rules of Procedure, the public reprovval will be effective when this decision becomes final. Furthermore, pursuant to rule 9.19 of the California Rules of Court and rule 271 of the Rules of Procedure, the court finds that the interests of respondent and the protection of the public will be served by the following specified conditions being attached to the public reprovval imposed in this matter. Failure to comply with any conditions attached to this

reproval may constitute cause for a separate proceeding for willful breach of rule 1-110 of the Rules of Professional Conduct of the State Bar of California.

Respondent is hereby ordered to comply with the following conditions attached to his public reproval for a period of one year following the effective date of the public reproval imposed in this matter:

1. During the one-year period in which these conditions are in effect, respondent must comply with the provisions of the State Bar Act and the Rules of Professional Conduct;

2. Within thirty (30) days after the effective date of his public reproval, respondent must contact the Office of Probation and schedule a meeting with a probation deputy to discuss these conditions attached to his public reproval. Upon the direction of the Office of Probation, respondent must meet with a probation deputy either in-person or by telephone. During the one-year period in which these conditions are in effect, respondent must promptly meet with probation deputies as directed and upon request.

3. Within ten (10) days of any change, respondent must report to the Membership Records Office of the State Bar, 180 Howard Street, San Francisco, California, 94105-1639, and to the Office of Probation, all changes of information, including current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code;

4. Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10 and October 10 of the period during which these conditions are in effect. Under penalty of perjury, respondent must state whether he has complied with the State Bar Act, the Rules of Professional Conduct and all conditions attached to his reproval within the preceding calendar quarter. If the first report will cover less than thirty (30) calendar days, that report must be submitted on the reporting date for the next calendar quarter and must cover the

extended period. In addition to all quarterly reports, respondent must submit a final report, containing the same information required by the quarterly reports. The final report must be submitted no earlier than twenty (20) days before the last day of the period during which these conditions are in effect and no later than the last day of that period;

5. Subject to the assertion of applicable privileges, respondent must answer fully, promptly and truthfully, all inquiries of the Office of Probation which are directed to him personally or in writing relating to whether respondent is complying or has complied with the conditions attached to this reproof; and

6. Within one year of the effective date of this public reproof, respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the State Bar Ethics School, given periodically by the State Bar at either 180 Howard Street, San Francisco, California, 94105-1639, or 1149 South Hill Street, Los Angeles, California, 90015, and passage of the test given at the end of the session. Arrangements to attend Ethics School must be made in advance by calling (213) 765-1287, and paying the required fee. This requirement is separate from any Minimum Continuing Legal Education ("MCLE") requirement, and respondent will not receive MCLE credit for attending Ethics School (Rules Proc. of State Bar, rule 3201.).

It is further ordered that respondent take and pass the Multistate Professional Responsibility Examination ("MPRE") administered by the National Conference of Bar Examiners, MPRE Application Department, P.O. Box 4001, Iowa City, Iowa, 52243, (telephone 319-337-1287) and provide proof of passage to the Office of Probation, within one year after the effective date of the public reproof imposed in this matter. Failure to pass the MPRE within the specified time results in actual suspension by the Review Department, without further hearing, until passage. (But see Cal. Rules of Court, rule 9.10(b), and Rules Proc. of State Bar, rule 321(a)(1) and (3).)

VII. Costs

The court orders that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

IT IS SO ORDERED.

Dated: July _____, 2010

LUCY ARMENDARIZ
Judge of the State Bar Court